

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DESTINY SIENNA RENEE
ORTIZ, a/k/a DESTINY SIENNA RENEE
VASQUEZ, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAVID B. VASQUEZ, JR.,

Respondent-Appellant.

UNPUBLISHED
November 9, 2004

No. 255668
Saginaw Circuit Court
Family Division
LC No. 00-026254-NA

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The minor child was placed in respondent's care under court order and express instruction that he not allow contact between the child and her mother, whose parental rights to this child and two other children had been previously terminated. Respondent nonetheless allowed the child to have extensive contact with her mother, who has a history of substance abuse. The minor child reported that she lived and slept with her mother, whom she identified by name. While it is not neglect for a parent to leave a child with an appropriate caregiver, *In re Nelson*, 190 Mich App 237, 241; 475 NW2d 448 (1991), the termination of the mother's parental rights to this child certainly establishes that she is not an appropriate caregiver.

Moreover, given respondent's testimony that he never believed and still does not believe that contact with the mother is harmful to the minor child, the trial court was fully justified in concluding that respondent would be unable to provide proper care by protecting the child from such contact in the future and that there was a reasonable likelihood, based on respondent's conduct, that the child would be harmed if returned to his custody. We are not persuaded by respondent's suggestion that the child was not endangered by contact with her mother because

the mother's parental rights to other children were terminated for "simple neglect" rather than "active abuse." The statute plainly recognizes that a child may be seriously harmed in ways other than by physical injury or abuse, as it authorizes the extreme remedy of termination of parental rights based on neglect. MCL 712A.19b(3)(g). Furthermore, because respondent continues to lack any understanding that contact between the minor child and her mother is harmful to the child, we conclude that the trial court did not clearly err by finding that termination of his parental rights was not clearly contrary to the best interests of the child. *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000).

Finally, respondent contends that the trial court improperly shifted the burden of proof to him as evidenced by certain comments made in the court's bench opinion. After reviewing the record, we are convinced that the court applied the correct standard. The trial court's observation that the only evidence refuting petitioner's case was respondent's self-serving testimony is not inconsistent with the court's correct application of the clear and convincing evidence standard to petitioner's case. MCL 712A.19b(3); *Trejo, supra* at 355.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski